

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JORGE OSORIO,

Plaintiff,

-against-

**ORDER**  
CV 10-2834 (ADS)(ARL)

ST. FRANCIS HOSPITAL

Defendant.

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**LINDSAY, Magistrate Judge:**

Before the court is the plaintiff's motion dated November 17, 2011, seeking to compel the defendant St. Francis Hospital to appear for a 30(b)(6) deposition. The defendant has opposed the motion by letter dated November 21, 2011. For the reasons set for below, the motion is denied.

By way of background, the plaintiff commenced this FLSA action on June 21, 2010 alleging that the defendant had failed to pay him overtime. On April 15, 2011, the plaintiff commenced a separate action against St. Francis Hospital and two individuals, alleging discrimination based on his national origin and race under 42 U.S.C. § 1981. The second action is pending before Judge Wexler and Magistrate Judge Brown. Although the parties have tried to cooperate to avoid duplicative discovery, the cases have not been consolidated.

On August 23, 2011, the plaintiff served the defendant with a 30(b)(6) notice in this matter. Six days later, the plaintiff sought his third extension of the discovery deadlines solely for the purpose of conducting that deposition. After consulting with the District Judge, discovery was extended to November 18<sup>th</sup>, but the parties were warned that no further extensions would be granted. Thereafter, the defendant objected to the 30(b)(6) notice on the ground that the notice failed to describe the matters on which the plaintiff intended to examine St. Francis Hospital. However, the defendant invited the plaintiff to re-serve a notice that was in compliance with the rules.

For some unexplained reason, rather than re-serve the notice in this matter, the plaintiff chose to serve a 30(b)(6) notice in the § 1981 matter. That notice was identical to the one served in this matter and thus, upon receipt, the defendant immediately objected to the second notice. The following day, the plaintiff served a third 30(b)(6) notice in the §1981 matter. The third notice, which is the subject of this application, stated that the defendant was to be examined in connection with the claims, denials and affirmative defenses pled in the answer. Although the plaintiff may be operating under the presumption that discovery has been consolidated, the plaintiff's June 2011 application to consolidate discovery, filed in the §1981 action, is *sub judice* and the plaintiff's August 2011 request to consolidate discovery filed in this matter was denied. Accordingly, to the extent the plaintiff seeks to compel the 30(b)(6) notice filed in the § 1981

matter, he must make that application to Judge Brown.

Dated: Central Islip, New York  
November 29, 2011

**SO ORDERED:**

\_\_\_\_\_/s/\_\_\_\_\_  
ARLENE R. LINDSAY  
United States Magistrate Judge